

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES FOR THE USE
AND BENEFIT OF PHOENIX
METALS COMPANY,

Plaintiff,

v.

Case No. 2:20-cv-148-FtM-38NPM

WORTHFAB, LLC
Defendant.

ORDER

Before the Court is the Motion for Default Judgment Against Defendant Worthfab LLC (Doc. 25). No response was filed to the motion and the response time has lapsed. Nevertheless, the Court finds the motion insufficient.

Plaintiff Phoenix Metals Company (“Phoenix”) seeks a default judgment against Defendant Worthfab, LLC. “When a defendant has failed to plead or defend, a district court may enter judgment by default. Fed. R. Civ. P. 55(b)(2). Because of our ‘strong policy of determining cases on their merits,’ however, default judgments are generally disfavored.” *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1244-45 (11th Cir. 2015). Entry of a default judgment is warranted only when there is a sufficient basis in the pleadings for judgment to be entered. *Id.* at 1245.

A sufficient basis is akin to facts sufficient to survive a motion to dismiss for failure to state a claim. *Id.* So, when evaluating the sufficiency of the alleged facts, the Court looks to whether the complaint contains sufficient factual matter that, when accepted as true, states a claim for relief that is plausible on its face. *Id.* A defaulted defendant is

deemed to admit all well-pleaded allegations of fact but is not held to admit facts not well-pleaded or to admit conclusions of law. *U.S. Bank, N.A. as trustee for LSF8 Master Participation Tr. v. Tobin*, 754 F. App'x 843, 845 (11th Cir. 2018) (citing *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1245 (11th Cir. 2015)).

The Complaint raises two claims: (1) an Action on the Miller Act Payment Bond (Count I); and (2) Breach of Contract (Count II). In the motion, Phoenix did not discuss the elements for each claim, provide citations to authority as to these elements, and support each element by pinpoint citation to the factual allegations in the Complaint (similar to mounting a defense against a motion to dismiss). For the Court to find a sufficient basis in the pleadings for a default judgment, Phoenix must demonstrate its Complaint adequately alleges facts that satisfy each element of its theories of recovery. The Court will deny Phoenix's Motion for Default Judgment (Doc. 25) without prejudice to allow Phoenix the opportunity to file a renewed motion that complies with this Order.

Accordingly, it is **ORDERED**:

The Motion for Default Judgment Against Defendant Worthfab LLC (Doc. 25) is **DENIED without prejudice**.

DONE and **ORDERED** in Fort Myers, Florida on July 7, 2020.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE